PART IV

Section 1—C

GENERAL STATUTORY RULES AND STATUTORY ORDERS ISSUED BY THE CENTRAL GOVERNMENT AND ORDERS MADE BY THE PRESIDENT AND REPUBLISHED BY THE STATE GOVERNMENT.

ELECTION COMMISSION, INDIA.

NEW DELHI,

Dated the 10th November, 1967.

NOTIFICATION

No. 82/MY/22/67.—In pursuance of Section 106 of the Representation of the People Act 1951, the Election Commission hereby publishes the Order, pronounced on the 14th September 1967 by the High Court of Mysore at Bangalore in Election Petition No. 22 of 1967.

IN THE HIGH COURT OF MYSORE AT BANGALORE

Thursday dated the 14th day of September 1967.

Before

THE HON'BLE MR. JUSTICE K. R. GOPIVALLABHA IYENGAR

Election Petition No. 22 of 1967

K. Govinda Bhat, son of
K. Ganapathi Bhat, aged
about 26 years, Advocate,
residing at Puttur of Puttur
Kasaba, P.O. Puttur,
South Kanara .... *Petitioner.*

(By Sri K. R, Karanth and Sri K. R. D. Karanth, Sri S. B. Swethadri and Sri P. Ganapathy Bhat and Sri K. N. Mallya)

Vs

B. Vittaladas Shetty, aged about 45 years, residing at Vokkethoor, in Vittal Kasba village of Buntwal taluk, Post Buntwal.

Respondent.

(By Sri V. S. Malimath, Sri B. K. Ramachandra Rao and Sri M. Gopalakrishna Shetty)

Election Petition filed by the Petitioner under Section 81 of the Representation of the People Act, 1951 challenging the election of the Respondent, to the Mysore Legislative Assembly from the Puttur Constituency in the General Elections held in February 1967 and seeking an order that the election of the Respondent to the Mysore Legislative Assembly for Puttur Constituency No. 132, at the 1967 General Elections may be declared to be null and void and to grant the costs of this petition.

This Election Petition coming on for trial on Monday 21st, Tuesday 22nd, Thursday 24th, Friday 25th, Monday 28, Tuesday 29th, Wednesday 30th, Thursday 31st days of August 1967 and Friday 1st, Monday 4th, Tuesday 5th, Wednesday 6th Friday 8th, days of September 1967 in the presence of Sri K. R Karanth, Sri K. R. D. Karanth and from 21st August 1967 Sri S. B. Swethadri Advocate for the Petitioner and Sri V. S. Malimath and Sri M. Gopalakrishna Shetty and from 21st August 1967 Sri B. K. Ramachandra Rao Advocate for Respondent this Election Petition having stood over for consideration, the Court made the following Order this Thursday of September 1967.

ORDER

1 (*a*) The petitioner in this case is an elector included in the electoral roll of Puttur Assembly Constituency of South Kanara District. He has filed this petition in his capacity as such an elector under Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as the Act).

(*b*) There were four candidates contesting for the election to the Mysore Legislative Assembly from the Puttur Constituency during the General Elections held on 19th February 1967. The respondent was a candidate of the Congress Party. The petitioner was working on behalf of one K. Rama Bhat who was contesting as a candidate of the Jansangh Party. The total number of votes in this constituency is 66,844 and actually 47,349 votes have been polled. The counting of the votes was on 22nd February 1967 and the result of the elections was published on the 23rd February 1967. The respondent secured 21,552 votes while the next candidate K. Rama Bhat of the Jansangh Party secured 14,125 votes. The respondent was accordingly declared elected. The election of the respondent is challenged by this petition as being void under Section 100 (1) (b) of the Act.

2. The petitioner has set out the several corrupt practices alleged to have been committed by the respondent which would invalidate his election, as hereunder.

(*a*) That the respondent got printed and published by the Congress Election Committee, Puttur, the pamphlets dated 23rd January 1967, a copy of which is marked as Exhibit P-1 in this case, at the Janatha Power Press, Vittala, for purposes of being distributed in the various villages comprising the aforesaid assembly constituency. It is also stated that the Deputy Commissioner has not raised any objection for the issue of such pamphlets and by his silence he has created an impression in the minds of the voters that the pamphlet has in fact been issued under his authority. Thus, it is stated the respondent is guilty of

having misused the governmental machinery to further his own prospects and has attempted to unduly influence the voters to vote for him.

(b) That the respondent and his agents got an order from the Government suspending the collection of land revenue which was payable in three instalments by the end of January, February and March This was by a telegram dated 25th January 1967 issued by the Revenue Secretariat. It is stated that at the instance of and to favour the Congress candidate the State Government directed the Deputy Commissioner not to take coercive steps to collect the land revenue. This Order was communicated to all the Tahsildars and the collection of the land revenue was suspended. It is submitted that the steps to suspend the collection of the land revenue were taken by the Government immediately after the nominations were accepted. The suspension was revoked by a telegram dated 29th March 1967, and therefore the telegram issued in January 1967 was deliberately intended to influence and interfere directly or indirectly with the free exercise of the electoral right of the voters. By this act of suspension of the Collection of the land revenue the people were led to believe that if they voted for the Congress candidate, land revenue would not be levied there after.

(c) The petitioner refers to a hand-bill dated 5th February 1967 purporting to have been issued under the name of one Kokebail Sanjiva Shetty who stood as a candidate for election to the Lok Sabha from the Udipi Parliamentary Constituency, and who was also a sitting member of the Mysore Legislative Assembly at that time. This leaflet a copy of which is marked as Exhibit P-13 has been distributed by the respondent and his agents during the elections By this act, the electors were misled into a belief that if they voted and elected the Congress candidate they need not pay land revenue. By this act the respondent is said to have committed corrupt practice coming within the provisions of Section 123(3) of the Act.

(d) The respondent and his agents have widely distributed pamphlets like Exhibit P-12 printed and published by the Shantinatha Press, Puttur, under the authority of the Congress Election Committee, which was intended to promote and further the election prospects of the respondent; by this pamphlet an appeal was made to the Muslim voters to vote for the Congress candidate on the ground that they enjoy religious freedom if they should vote for the Congress candidate. It is submitted that this appeal to the religious sentiments of the Muslim voters was done with a view to induce them to vote for the Congress It is further averred in paragraph 16 of the petition that at the instance of the respondent further pamphlets have been published describing the Jansangh as a Communal Organisation which is against the interests of the Muslim Community and that their religious freedom will be safe only under the Congress rule. It is submitted by the petitioner that the above conduct of the respondent is a corrupt practice under Sec. 123 (3) and 123 (3) (A) of the Act.

(e) It is averred that the Puttur Constituency abuts the Kerala State and a distance of six miles from Kerala-Mysore border within the State is described as Belt Area. It is stated that there are check-posts across the main road between the Kerala-Mysore border on the Mysore side where police officers are posted to see that people are prohibited from transporting any foodgrains irrespective of quantity to this Belt Area from the State of Mysore. The people in that area had a grievance about the existence of these gates as great hardship and inconvenience was caused to them. The respondent being aware of this, manoeuvred and prevailed upon the Deputy Commissioner and the concerned authorities to have the gates removed and shifted to the actual Kerala-Mysore border with a view to mislead the aggrieved electors in that area to believe that their removal to the border was permanent. The check-posts were shifted to the actual Kerala-Mysore border by an order of the Deputy Commissioner dated 31st January 1967. This act, it is submitted, was intended to unduly influence the electors and to further the election prospects of the

respondent. There appear to have been six such check-posts in the constituency which have been removed and shifted as mentioned above at different places. The respondent, it is alleged, in many of his speeches claimed that this had been achieved by him. It is also mentioned by the petitioner that immediately after the elections were over the gates have again been moved back to their old locations. It is stated that this action of the respondent shows that the help of the Government and its machinery was being freely utilised by the respondent for furthering his prospects as he belonged to the ruling party.

(*f*) The next corrupt practice alleged by the petitioner relates to the expenditure incurred by the respondent during the election. It is submitted that the accounts submitted by the respondent are incorrect, incomplete and not in accordance with Section 77 of the Act and the rules framed thereunder. It is stated that the accounts are not kept by the respondent in the manner enjoined by Sections 77 and 78 of the Act; he has not produced any vouchers or receipts to support the items of expenditure. Several items of expenditure have been omitted in the accounts submitted by the respondent. He has toured all over his constituency by car and he has incurred expenditure by arranging public meetings. It is submitted that the petitioner has reason to believe that the respondent has incurred expenditure for above the statutory limit and he has suppressed this fact.

For the above reasons the petitioner contends that the election of the respondent to the Mysore Legislative Assembly from the Puttur Constituency be held illegal and invalid.

3 (*a*). The respondent in his written statement has denied all the allegations made in the petition. He states that it is false to allege that the pamphlet Ex. P-1 was printed at his instance or that the same was meant for the purpose of being distributed in the various villages in the constituency. He has ascertained that these pamphlets were got printed and published by the Congress Election

Publicity Committee, Puttur, for being given to the Congress workers for their own use for enabling them to know the particular booths in respect of the particular villages in that constituency. He submits that there were about 10 to 12 honorary Congress Workers in each of the villages. The number of the villages in the constituency is given as 65. He has further ascertained that the Congress Election Publicity Committee, Puttur, had got printed 1000 such pamphlets and distributed about 900 such pamphlets to the Congress Workers in the various villages in the said constituency and that the remaining undistributed pamphlets were with one Abdul Khader, who has been examined as R. W. 4. The respondent denies that such pamphlets have been seen in the hands of voters of Puttur and other villages as alleged by the petitioner. He further submits that he learnt that the Congress Election Publicity Committee had asked the printer to print 1000 copies of the list of booths of the Puttur constituency and the material to be printed at the top and at the bottom were furnished to the printer. The printer was given the official publication of the list of booths published by the Deputy Commissioner *cum*-District Election Officer, dated 23rd January 1967 and was asked to print only Cols. 1 to 4 of that list. By mistake the printer has in addition to printing the particulars regarding booths included the name of the Deputy Commissioner and the District Election Officer that was found in the list of booths. He submits that the printing of this portion was not authorised by the Congress Election Publicity Committee, Puttur and the inclusion of the same in Exhibit P-1 is a *bona fide* mistake committed by the printer. It is further alleged that the number of pamphlets printed and published was very few and that the pamphlets were given only to the Congress Workers for their own use and reference and were not distributed to the voters; this did not in any manner interfere directly or indirectly with the free exercise of the electoral rights of the voters. The respondent further submits that no reasonable person reading the said pamphlet would get an impression that the same has been issued under the authority of the Deputy

Commissioner-*cum*-District Election Officer. The respondent further denies that there has been any misuse of the Governmental authority and machinery to further his prospects at the election.

(*b*) The respondent denies that he or his agents have got the land revenue collections suspended and that thereby committed any corrupt practice as alleged by the petitioner. The respondent also denies his having anything to do with the collection or suspension of land revenue. He further states that even otherwise this act does not constitute a corrupt practice. He states that he is not aware of the circumstances under which the telegram dated 25th January 1967 was sent to the Deputy Commissioner, South Kanara, in regard to the collection of land revenue. In fact he denies any knowledge with regard to the several steps taken by the revenue authorities in connection with the collection of land revenue.

(*c*) Regarding the issue of pamphlets by Kolkebail Sanjiva Shetty, the respondent states that neither he nor his agents had distributed to the electors of the Puttur constituency the hand-bill dated 5th February 1967. The respondent denies that the pamphlet was meant deliberately to mislead the voters and to believe that if they voted for the congress candidate, they need not pay land revenue.

(*d*) The respondent denies that the Congress Election Committee got printed and published any pamphlet in Shantinatha Press at Puttur and did so with a view to promote and further the prospects of his election. He further denies that he appealed to the religious sentiments of the Muslim voters. He avers that even if an appeal was made as indicated in the manner referred to by the petitioner, it does not amount to a corrupt practice. The respondent submits that what the pamphlet purports to do is to state that India is a secular State, where the Muslims enjoy the religious freedom which they do not enjoy in any other country and the Congress Party favours the retention of such freedom and therefore Congress ought to be preferred by the voters; such an appeal, it is contended does not

amount to an appeal to the religious sentiments and is not a corrupt practice under the Act.

(*e*) Regarding shifting of the gates, the respondent denies the allegation that he manouevred and prevailed upon the Deputy Commissioner and the concerned authorities to get the gates shifted and this misled the electors of those areas into believing that the removal of the gates was permanent. The respondent also denies that the action taken to remove or shift the gates was intended to unduly influence the voters and to further his prospects at the elections. He states that the shifting of the gates was as a result of public agitation. It is not denied that the gates have been shifted back. It is submitted that the gates have been shifted back to the old locations as an experimental measure for about three days. The shifting of the gates has been done by the Government and its subordinate officials in the usual course of their business. It is also denied that the Government and its machinery was used by the respondent to further his election prospects.

(*f*) In regard to the election expenses incurred by him, the respondent denies the allegation made by the petitioner. He states that he has produced vouchers in support of the expenditure incurred by him. He denies that he got printed any wall posters and incurred any expenditure, in that behalf. He also denies that he toured the entire constituency by car only. He states he has travelled by car and other conveyances. He states that the public meetings were organised by his supporters at the several places and that he has not incurred any expenditure in that behalf. He states that he has not incurred expenditure above the statutory limit. The allegation that he has suppressed the accounts is said to be false and cannot be accepted. Therefore, he submits that there has been no contravention of the provisions of Section 77 and that he has not committed any corrupt practice coming within the provisions of Section 123(6) of the Act.

For the above reasons he states that the petition is not sustainable and is liable to be dismissed.

4. on hearing the counsel, the following issues were framed :

1. Does the petitioner prove that the respondent has committed the following corrupt practices ?

(*a*) (i).—The respondent got printed and published a pamphlet produced along with the petition purporting to be dated 23rd January 1967 appealing to the voters of the Puttur Constituency to vote for the Congress and for the purpose of being distributed in the various villages comprising the Puttur Assembly Constituency and they were distributed freely and widely by the respondent and his agents. And, by the Publication of the impugned pamphlet majority of the voters in the Constituency has been influenced to vote for the respondent (Congress candidate) being under the belief that it is an exhortation by the Deputy Commissioner to vote for the candidat emention-ed in the pamphlet.

(*a*) (ii).—Does the publication and distribution of the above pamphlet constitute in law and in fact a corrupt practice, *viz.*, misuse of the Governmental Authority and machinery to further the prospects of the respondent and to unduly influence the voters to vote for him?

(*a*) (iii).—Do the above acts constitute corrupt practices under Section 123(2) and (7) of the Representation of People Act?

(*b*) (i).—The respondent and his agents got the land revenue payable by the end of January, Fubruary and March 1967 suspended by the State Government and the State Government did issue at the instance of the respondent and to favour the Congress Candidates a telegram dated 25th January 1967 referred to in paragraph 13 of the petition directing the Deputy Commissioner not to take coercive steps to

collect the land revenue and that the Deputy Commissioner in turn ordered all the Tahsildars to act accordingly.

(b) (ii) The said telegram dated 25th January 1967 issued by the State Government was deliberately intended to influence and interfere directly or indirectly with the free exercise of the electroral right of the voters by inducing the voters to believe that if they voted for the Congress Candidate, land revenue would not be levied thereafter;

(b) (iii) Whether the above acts constitute corrupt practices as contemplated under Section 123 (2) and (7) of the R.P. Act?

(c) (i) The respondent and his agents have widely and freely distributed to the electors of the constituency a hand-bill dated 5th February 1967 alleged to have been issued by one Kolkebail Sanjiva Shetty describing himself as a member of the Legislative Council and thus misled the electors into a belief that if they vote and elect the Congress Candidate they need not pay land revenue.

(c) (ii) Does the above act constitute a corrupt practice under Section 123 (2) of the R.P. Act?

(d) (i) The Congress Election Committee which was interested in promoting and furthering the election prospects of the respondent, under its authority got printed and published a pamphlet at Shanthinatha Press, Puttur, and appealed thereby to the Muslim voters to vote for the Congress Candidate for the reason that they will have their religious freed m which they were then enjoying in Bharat?

(d) (ii) Does this amount to an appeal to the religious sentiments of the people with a view to induce them to vote for the Congress?

(*d*) (iii) Do the above acts constitute corrupt practice under Section 123 (3-A) of the R. P. Act.

(*e*) (i) At the instance of the respondent pomphlets have been published describing the Janasangh as a Communal Organisation which is against the interests of the Muslim Community and that their religious freedom will be safe only under the Congress rule.

(*e*) (ii) Does the above act constitute a corrupt practice under Section 123 (3-A) of the R.P. Act?

(*f*) (i) The respondent manoeuvred and prevailed upon the Deputy Commissioner and the concerned authorities to have barrier gates (6 check posts) put up across the main roads at a distance of 6 miles from the Kerala-Mysore border on the Mysore side shifted to the actual Kerala-Mysore borders in an attempt to mislead the aggrieved electors in those areas into believing that their removal to the border was permanent.

(*f*) (ii) The Deputy Commissioner has issued written instructions to the Sub-Inspector of Police, Vittal, and other concerned places to remove and shift the gates as aforesaid and the above actions were intended to unduly influence the electors and to further the prospects of the respondent in the election.

(*f*) (iii) Are these acts in fact and under law corrupt practices within the meaning of the provisions of Section 123 (2) and (7) of the R.P. Act?

(*g*) (i) The respondent has failed to maintain a separate and correct account of the expenditure incurred for the election as set out in paragraph 20 of the petition and in contravention of Section 77 of the R.P. Act and Rule 86 of the Conduct of Election Rules, 1961, and that the

accounts submitted by the respondent are incorrect, incomplete and untrue and not in accordance with the above section and the Rules prescribed thereunder and that these acts constitute corrupt practice under Section 123 (6) of the R.P. Act ?

(*g*) (ii) The respondent has incurred expenditure much above the statutory limit of Rs. 6,000 and suppressed the same from his accounts as alleged in para 20 of the petition and thus contravened the provisions of Section 77 (3) of the Act and Rule 90 of the Conduct of Election Rules, 1961, and therefore has committed corrupt practices under Section 123(6) of the R. P. Act.

2. Is the petition barred by limitation ?

3. Is the election of the respondent liable to be delcared *void* under Section 100(1)(b) of the Representation of People Act for the reasons mentioned above ?

4. To what relief is the petitioner entitled ?

5. Sriyuths K. N. Mallaya, S. B. Swetadri and P. Ganapathy Bhat Advocates appeared for the petitioner and Sriyuths B. K. Ramachandra Rao and M. Gopala Krishna Shetty appeared for the respondent.

6. Seven witnesses have been examined by the petitioner and Exhibits P-1 to P-27(f) have been marked for the petitioner. Five witnesses have been examined by the respondent and Exhibits R-1 to R-6 have been marked for the respondent.

7. The petitioner has not pressed Issues Nos. 1(e)(i) and (ii) and the respondent has not pressed Issue No. 2. Therefore, it is only the other issues that arise for consideration.

8. The issues that arise for consideration in this case relate to the various corrupt practices which the

respondent is alleged to have committed. As to how the evidence in such a case should be considered, my attention is drawn by the learned respondent's counsel to the decision reported in A. I. R. 1964 S. C. page 1366 (Mohan Singh *V.* Bhanwarlal) in which the Supreme Court had laid down that:

> "The onus of establishing the corrupt practice is undoubtedly on the person who sets it up and the onus is not discharged on proof of more preponderance of probability, as in the trial of a civil suit ..... The corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous.'

The same view has been expressed by the Supreme Court in 1965 S. C. page 183 (Jagdev Singh *V.* Pratap Singh), wherein it is observed:

> "in the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices at the election,
>
> "election, lies heavily upon the applicant and unless it is established in both its branches, *i.e.*, the commission of acts which the law regards as corrupt, and the responsibility of the succesful candidate directly or through his agents or with his consent for its practice not by mere preponderance of probability, but by cogent and reliable evidence beyond any reasonable doubt, the petition must fail.

It is also pointed out by the respondent's counsel that the above observations merely reiterate what the Supreme Court stated in A. I. R 1957 S. C. Page 444 at Page 456 (Harish Chandra V. Triloki Singh), that:

> "It should not be forgotton that charges of corrupt practices are quasi-criminal in character, and that the allegations relating thereto must be

sufficiently clear and precise to bring home the charge sto the candidates."

Sri K. N. Mallaya, the learned counsel for the petitioner, submitted that the rigour of the above Supreme Court rulings has been diluted by the observations made by the Supreme Court in A. I. R. 1966 S. C. Page 773 (Jagjit Singh *v.* Kartar Singh), wherein it is stated that the charge of corrupt practice against a returned candidate has to be proved, satisfactorily. In paragraph 15 of the above decision it is observed that:

> "When an Election Tribunal deals with an allegation about the commission of corrupt practice by a returned candidate, the charges framed are in the nature of quasi-criminal charges. The proof of the charge has a double consequence ; the election of the returned candidate is set aside, and he incurs subsequent disqualifications as well. Therefore, when a charge of this kind is framed against a returned candidate, it has to be proved satisfactorily."

The Supreme Court has taken the same view as has been laid down in the earlier Supreme Court decisions. The submission that the view of the Supreme Court is changed by virtue of the decision in A. I. R. 1966 S.C. page 777 cannot be accepted.

9. The corrupt practice that is referred to in Issue No. 1 (a) (i) relates to the printing and publishing of a pamphlet which is dated 23th January 1967 and marked as Exhibit P-1 in the case. It is not disputed by the respondent that Exhibit P-1 was printed in the Janatha Power Press at Vittala by P.W. 1 at the instance of R.W. 4, B.A bdul Khader, acting Convener of the Congress Chunavana Prachar Samithi, for and on behalf of the respondent. The petitioner's contention is that Exhibit P-1 was printed on 23th January 1967 and was distributed in the villages of Puttur constituency since the last week of January 1967. The respondent disputes the

above statement and suggests that Exhibit P-1 could have been printed and delivered to R. W. 4 not earlier than 5th February 1967 and could not have been distributed amongst the voters as contended by the petitioner.

(*a*) P. W. 1 is the printer of Exhibit P-1. He says that Exhibit P-10 (k) the duplicate of the Bill dated 5th February relates to the printing of 100 copies of Exhibit P-1. He also also acknowledges the payment of the printing charges in respect of this item. This witness says that R. W. 4 who was a person working in the Congress Samithi Office at Vittala place the order for the printing of copies of Exhibit P-1. R.W.4 states that the order for printing of 1,000 copies of Exhibit P-1 was placed by him on 5th February 1967 and that within 2 or 3 days the printed copies of Exhibit P-1 were delivered to him by P. W. 1. From this the respondent's counsel wants me to infer that the order for printing was placed on 5th February 1967 and the copies could have been received about the 8th or 9th of February 1967. But, the petitioner's counsel relies on the date found in Exhibit P-1 and contends that copies of Exhibit P-1 were printed on 23th January 1967, the date found at the bottom of Exhibit P-1. P. W. 1 and R. W. 4 state that when the order for printing Exhibit P-1 was placed, Exhibit P-3 (a) was also given along with instructions for printing as contained in Exhibit P-3. Exhibit P-3 (a) is the list of Polling Stations, issued by the Deputy Commissioner under the provisions of Section 25 of the Act. This is dated 23rd January 1967. It is admitted by the respondent and also by R. W.4 that Exhibit P-3 (a) was received by them but they are not aware of the exact date of receipt. From the fact that Exhibit P-1 bears the same date as Exhibit P-3 (a) it cannot be inferred that Exhibit P 1 was printed on 23rd January 1967. Exhibit P-3 (a) could have been delivered to P. W. 1 for the purpose of printing subsequent to 23rd January 1967. It is also probable that the copies of Exhibit P-1 were delived on 5th February 1967 the date of the Credit Bill Exhibit P-10 (k). Therefore, there is, no definite proof that copies of Exhibit P-1 were available for distribution in the last week of January 1967.

(*b*) Regarding the distribution of pamphlets like Exhibit P-1, the learned counsel for the petitioner relied upon the evidence of P. Ws. 2, 3, 4, 5 and 7, while the respondent's counsel contends that the evidence of these witnesses is unreliable and cannot be acted upon. It must be noticed that in paragraph 7 of the petition, the petitioner states that pamphlets like Exhibit P-1 were freely and widely distributed by the respondent and his agents and that the petitioner has seen these pamphlets in the hands of voters in Puttur, Panaje, Kanyana villages and various other villages in the constituency. Comments were made by the respondent's counsel that it would not have been difficult for the petitioner to state who distributed the pamphlets and also mention the names of the villages of the constituency where he saw such pamphlets. P. W. 2 is a hotel-proprietor at Puttur. He says that two Congress volunteers came to his hotel and delivered 50 copies of Exhibit P-1 saying that they were issued by the Deputy Commissioner and District Election Officer of South Kanara and that he should tell his customers that they should vote for the Congress candidate. It is commented that there is no reference in the petition regarding the statements made by the two Congress volunteers, while delivering 50 copies of Exhibit P-1. The names of the volunteers are given for the first time by this witness. The nonmention of the names of the volunteers who distributed the pamphlets to P. W. 2 in the petition is pointed out as an additional circumstance that the petitioner is building up the story, by examining the witnesses to suit the indefinite averments made in the petition. This witness states that Abdul Khader and Vijaya Kumar distributed copies of Exhibit P-1 in his hotel. Vijaya Kumar is not examined. This witness further states that in a public meeting which he attended, one S. C. Naik complained that a pamphlet like Exhibit P-1 ought not to be issued by any party. This S. C. Naik has not been examined. The evidence of the above two would have been valuable to support the case that the copies of Exhibit P-1 were distributed. In his cross examination this witness gives inconsistent answers in regard to the display of Congress election placards in front of his hotel.

In one place he states that the placards of Jansangh, the Independent Party and the Swatantra Party candidates were exhibited in front of his hotel and there were no other posters besides these. But in the earlier part of his deposition he states that the posters of Jansangh Party, Congress Party and of Memiraj of Swatantra Party were kept in front of his hotel. Obviously his later answer is the correct answer. No placard of the Congress Party was displayed in front of his hotel. It is also suggested that he is a member of the Jansangh Party. It is also pointed out that one Mudraje Ishwarabhat was present when copies of Exhibit P-1 were given to him by R. W. 4. This Mudraje Ishwarabhat has not been examined. I find it difficult to accept the evidence of this witness as disinterested. P. W. 3 is a resident of Volkatte Village of Vittala Firka. He states that copies of Exhibit P-1 were distributed in his village by R. W. 4, Kantappa Alva, and other volunteers. Kantappa is not examined. No mention of this village is made in the petition. This witness swears that copies of Exhibit P-1 were given to his hands by some volunteers when he was in the shop of one Ishwar. That Ishwar is not examined. It is gathered from his evidence that copies of Exhibit P-1 had been distributed house to house in Kepu village and there are 1,000 houses in the area of Kepu village. He says that he has not seen copies of Exhibit P-1 anywhere else. His statement that copies of Exhibit P-1 were delivered house to house in Kepu village cannot be accepted, as only 1,000 copies had been printed and were available for distribution. I cannot ignore the fact that R. W. 4 has produced 95 copies of Exhibit P-1 into court, as remaining unused out of the 1,000 copies printed. In the cross-examination of this witness it is elicited that the number of Congress workers may be 900. Hence only about 800 copies of Exhibit P-1 could have been distributed. P. W. 4 is the election agent of Rama Bhat, the Jansangh Candidate for whom the petitioner was working. This witness swears that copies of Exhibit P-1 were being distributed by Congress volunteers. He says that he saw copies of Exhibit P-1 being distributed in Kanyana, Karopadi, Poonacha, Mani, Kuriya and Madanur villages. I should

be noted that except Kanyana the names of other villages do not find a place in the petition. He says that he saw copies of Exhibit P-1 in all the villages 4 or 5 days after filing the nomination papers. The last date for filing the nomination paper was 20th of January 1967. Therefore, the evidence of this witness amounts to saying that on or about the 24th or 25th of January 1967, he saw copies of Exhibit P-1 in all the villages. This would be impossible in view of the fact that even according to the petitioner the order for printing copies of Exhibit P-1 was placed on the 23rd of January 1967 and according to R. W. 4 the copies of Exhibit P-1 were given to him by P. W. 1 two or three days after the order was placed. But, as I have already observed, the copies of Exhibit P-1 could have been delivered on 5-2-1967. His statement that he went alone to the villages where he saw copies of Exhibit P-1 and that none accompanied him is also hard to believe. Similarly his statement that he saw copies of Exhibit P-1 in the end of January 1967. This witness says that, regarding the distribution of copies of Exhibit P-1 and the effect of it on the electors. He has spoken to the petitioner and also to Rama Bhat. Rama Bhat is not examined. This, it is pointed out by the respondent, as a very glaring omission. Rama Bhatta could have given evidence regarding distribution of copies of Exhibit P-1 and also corroborated the evidence of P. W. 4. P. W. 5 is a resident of Kolithige village. Admittedly he is the brother of R. W. 1 K. Balakrishna. He says that he saw leaflets like Exhibit P-1 and those were delivered at his place by some Congress volunteers and by the Chairman of the Panchayat canvassing for the respondent. The Chairman referred to by him is no other than his own brother. He says that he saw Exhibit P-1 at Keyyur, Paltuadi and Kethambadi villages. None of the villages are mentioned in the petition. He denies the suggestion that he is the Chief Sanchalak of R. S. S. (Rashtriya Swayamsevak Sangh) in his village. He says that he has told several people in his village that copies of Exhibit P-1 were given in his house and he has asked others if copies of Exhibit P-1 were distributed to them also. It is un-understandable why he should do so unless it be that he

is adversely disposed towards the Congress candidate and interested in the Jansangh candidate. The evidence he gives with regard to his visit to his brothers-in-law at Keyyura and Palthady and the relation of his at Kalambari is very artificial. Further, his statement that his brother-in-law at Keyyura showed him a copy of Exhibit P-1 and that he saw a copy of Exhibit P-1 with one Babu Gowda who had come to see his brother-in-law at Palthadi appears to be very unusual. His brother-in-law at Palthadi appears to have been ill and seven or eight people had come to see him. At such a time it is improbable that this witness would have seen the copies of Exhibit P-1. It is also difficult to accept the evidence of this witness regarding his visit to Kadembadi. He deposes in one place that he was travelling to Puttur from his place when the bus in which he was travelling went out of order and in another place he states that the bus in which he was travelling from Puttur to his place went out of order. His conduct in asking Chennappa Gowda whether he had received leaflets similar to Exhibit P-1 also discloses that the evidence of this person is not disinterested.

(c) The next witness referred to by the petitioner is P.W. 7 the petitioner himself. It is gathered from his evidence that he saw the respondent distributing pamphlets like Exhibit P-1 at Puttur. There is no mention of this in his petition. He says that he was in a shop called "Popular News Agency" of which one Hola is the proprietor. Hola is not examined. P.W. 7 also states that he saw the respondent in other shops also distributing copies of Exhibit P-1. He has also seen copies of Exhibit P-1 being distributed in other villages in the constituency and in particular saw distribution of the pamphlets in Balguri in Irde village. He says that he saw copies of Exhibit P-1 in the Bar Association where the members of the Bar were discussing about the propriety of issuing a pamphlet like Exhibit P-1. It is commented that no member of the Bar has been examined to speak to the fact of distribution of the pamphlets. The petitioner is a member of the Bar and he is a junior of Ram Bhatt, the Jansangh candidate.

The petitioner is also a member of the R. S. S. since 1962. *Prima facie* is evidence, like that of P. W. 4, is interested and therefore it is not unreasonable to expect corroboration of the evidence of these persons by other independent evidence which is available in this case before their evidence is accepted. This has not been placed before the court. The petitioner says that he collected copies of Exhibit P-1 one from the Bar room, the second given to him by the respondent during distribution and the third in the office of the Jansangh. He also remembers the names of a number of voters to whom copies of Exhibit P-1 were distributed. None of them has been examined in the case. The fact that only 1000 copies of Exhibit P 1 were printed improbabilises the vast distribution that has been spoken to by the petitioner and his witnesses. R. Ws. 3 and 4 state acknowledgments have been taken from those Congress workers to whom copies of Exhibit P-1 were delivered. But such records are not placed before court. It was submitted by the learned counsel for the petitioner that an adverse inference must be drawn that the copies of Exhibit P-1 were distributed indiscriminately. If there was no other evidence to the contrary of there were no circumstances improbalising such distribution, the submission of the petitioner's counsel could have been accepted. But, the position is different in this case. The petitioner's counsel also referred to the allegation in the written statement that there are 65 villages and in each village there were 10 or 12 Congress workers in each of them and commented that this statement is false and is put into conform to the number of copies of Exhibit P-1 got printed. The number of villages is said to be only 51 and the number 65 is an obvious mistake. In view of my foregoing discussion, this contention of the petitioner's counsel cannot also be accepted. From the above discussion in regard to the probative value to be attached to the evidence of the evidence of the several witnesses and the several circumstances adverted to above, the contention of the respondent that pamphlets like Exhibit P-1 were not distributed as alleged by the petitioner has much force.

(b) Another circumstance that has been emphasised by the petitioner's counsel is that the Deputy Commissioner has not protested against the issue of leaflets like Exhibit P-1 by the respondent. It must be noticed that a copy of Exhibit P-1 was sent to the Deputy Commissioner along with Exhibit P-3 by P. W. 1 on 4th March 1967. Therefore, there was no occasion for the Deputy Commissioner to raise any objection. Further, there is no obligation laid on him to object the issue of any pamphlet by the candidates. In any event, the failure of the Deputy Commissioner to raise objection does not lead to any inference of his being a party to the issue of a pamphlet like Exhibit P-1. There is absolutely no evidence to show that the Deputy Commissioner knew anything of Exhibit P-1 prior to the date of polling.

(c) The respondent's counsel invites my attention to the evidence with reference to the object of printing a pamphlet like Exhibit P 1 and to the distribution of it only amongst the Congress workers. In this connection my attention is drawn to Exhibit P-3 in which printing instructions are given to P.W. 1. A scrutiny of Exhibit P-3 indicates that there is no instruction in it to include name of the Deputy Commissioner in the matter to be printed. What is mentioned in Exhibit P-3 is set out only the four columns as found in Exhibit P-3 a). It is argued that the insertion of the name of the Deputy Commissioner in Exhibit P-1 is a mistake on the part of the printer. This is what has been mentioned in paragraph 5 of the written statement The Respondent states that he had not seen pamphlets like Exhibit P-1 during the election campaign and that it is only after the election petition was filed that he came to know that leaflets like Exhibit P-1 had been published and he denies that he distributed copies of Exhibit P-1 either at Puttur or at any other place. The respondent further says that the leaflets like Exhibit P 1 were meant only for distribution to Congress workers who were assisting him in the election campaign. As I have already observed, there is no reliable evidence to indicate that the respondent distrubued the pamphlets like Exhibit P-1 amongst the voters. But, I am unable

to accept the evidence of this witness professing ignorance of the issue of Exhibit P-1 during the course of the election campaign. In any event he cannot disown the responsibility for the issue of Exhibit P-1. Sri B. K. Ramachandra Rao also does not contend that the pamphlet was not issued by the Congress Chunavana Prachar Samithi, Puttur, which had been authorised to issue pamphlets on behalf of the Congress Candidates. The fact that only 10 0 copies of Exhibit P-1 were printed while the number of voters in the constituteney is 66,844 indicates that the intention of R.W. 4 in getting copies of Exhibit P-1 printed was for the distribution amongst the workers only.

(f) The respondent's counsel further submits that the contents of Exhibits P-1 *per se* do not interfere with the free exercise of the electoral rights of the voters. The top portion of Exhibit P-1 which is marked as Exhibit-P.1 (a) contains an appeal to the voters to cast their votes in favour of the Congress candidates. Under Exhibit P-1 (a) particulars of the Polling Booths "ಮತಧಾನ ಕೇಂದ್ರಗಳವಿವರ" are given and at the end of the list of Booths, the name of the Deputy Commissioner and the date and place are also mentioned. This appears to have been copied from Exhibit P-1(a) Exhibit P-1 (b) at the bottom of Exhibit P-1 also contains an appeal to elect the Congress candidate and the appeal is made by the Chunavana Prachar Samithi. It must be recorded that the inclusion of the name of the Deputy Commissioner in the Pamphlet Exhibit P-1 was not proper, quite apart from the fact that the said inclusion is unintentional. It is urged that a proper reading of Exhibit P-1 does not indicate that the Deputy Commissioner desired the voters to cast their votes in favour of the Congress candidate. Exhibit P-1(a) and Exhibit P-1 (b) are appeals by the Congress Chunavana Prachar Samithi and they contain an appeal to the voters to vote for the Congress candidate. This is not questionable. "ಮತಧಾನ ಕೇಂದ್ರಗಳ ವಿವರ" (particulars of polling booths) consisting of four columns is shown as above the name of the Deputy Commissioner. Notwithstanding this there is much force in

the contention that to read Exhibit P-1 to imply an appeal by the Deputy Commissioner to vote for the Congress candidate would be to strain the contents of Exhibit P-1. But, the inclusion of Deputy Commissioner's name ought to have been noticed by R.W. 4 or the respondent. The respondent and his witness R.W. 4 who were responsible for printing Exhibit P-1 have not taken requisite care to see that the pamphlet is properly printed in accordance witht the instructions given to the printer is evident. R. W. 4 has not even seen the proof Exhibit P-2 before Exhibit P-1 was finally printed. R. W. 4 ought to have withdrawn the pamphlets like Exhibit P-1 when they did not conform to the order placed by him and contained a mistake. It is as a result of their gross negligence that the name of the Deputy Commissioner got into Exhibit P-1. Though it may be that there is no interference with the free exercise of franchise by the voters, it cannot be said that the pamphlet Exhibit P-1 is absolutely devoid of any effect on the electorates if issued on a large scale, and the complaint made by the petitioner with reference to Exhibit P-1 is not without foundation, especially in view of the fact that the petitioner was not aware of the number of copies of Exhibit P-1 got printed by R. W. 4.

(g) The respondent's counsel next pointed out that there is no proof of either the candidates or their agents having approached the Deputy Commissioner before the issue of Exhibit P-1 nor is there a wisper of the Deputy Commissioner having consented for the issue of a pamphlet like Exhibit P-1. I have already mentioned that the alleged ommission of the Deputy Commissioner to protest against the issue of Exhibit P-1 does not in any manner indicate his consent. In these circumstances, I come to the conclusion that Exhibit P-1 was not distributed freely and widely by respondent and his agents amongst the voters of the Puttur Constituency. Further, I hold that the voters could not have been influenced by Exhibit P-1 being under the belief that it was an exhortation by the Deputy Commissioner to vote for the respondent, referred to in the pamphlet. I also find that by the issue of the pamphlets

the respondent or his agents have not obtained or procured any assistance of the Deputy Commissioner to further the prospects of the respondent. Therefore, my findings on Issue Nos. 1 (a) (i), (ii) and (iii) are against the petitioner.

10. (a) The next issue relates to the subject of land revenue. It is undisputed that the land revenue in the Puttur Constituency was payable in three instalments, by the end of January, February and March, 1967. In paragraph 12 of the petition it is urged that the respondent and his agents got the land revenue collection suspended and thus committed corrupt practice and for this reason his election is to be set aside. This is amplified in paragraph 13 of the petition. The respondent denies the aforesaid allegation. The earliest document in this connection is Exhibit R-3 dated 9th December 1966 from which it is clear that the question of abolishing land revenue was being examined by the State Government and a Committee was appointed to study the problem and to send proposals to Government P.W.4 in his evidence states that there was agitation for the reduction of land revenue and in 1965 the land revenue had been doubled. Whether effect must be given to the levy of revised rates of land revenue and water rate was duly considered by the Government. The Government had also learnt that notices had been issued to the landholders to pay land revenue and water rate at the enhanced rate. It is not disputed that the land revenue had been enhanced and the enhancement had almost been equal to the existing levy of land revenue. The Government in those circumstances opined that it is better to postpone the recovery of the enhanced land taxes till the end of March 1967 and it was ordered that necessary instructions may be issued to the Deputy Commissioners of all the Districts not to issue notices for the recovery of enhanced rates of land revenue and water rate and wherever notices had been issued, to postpone recovery till the end of March 1967 and at any rate not to take coercive proceedings till then. In pursuance of this decision of the Government, a telegram marked Exhibit P-16 was issued on 12th December 1966 by the Revenue Secretary to Government to the Deputy Commissioner, South

Kanara, asking him to instruct immediately all the Tahsildars of his District to stop issue of notices for the recovery of the revised rates of land revenue and water rate till the end of March 1967. It is seen from Exhibit P-21 that on 18th January 1967 one Sri Kokebail Sanjiva Shetty, M. L. A, requested the Revenue Secretary over the trunk phone to issue telephonic instructions to the Deputy Commissioner, South Kanara to suspend the steps that were being taken. In pursuance of the orders of the Revenue Minister, a telegram was issued by Revenue Secretary to the Deputy Commissioner, South Kanara, as per terms of Exhibit P-18 dated 26th January 1967, drawing attention to Exhibit P-16 and instructing him that it should be implemented strictly and no issue of notices or coercive processes should be taken for the recovery of land revenue and water rate till the end of March, 1967. It is clear that the respondent had nothing to do with the issue of either Exhibit P-16 or Exhibit P-18. As seen from Exhibit R-5, the question of revocation of the instructions issued earlier was taken up for consideration in the middle of March 1967. The matter was placed before the Cabinet appears to have taken a decision that the instructions issued to the Deputy Commissioners of the Districts should be withdrawn and they should be directed to take up the collection work and make recoveries as usual. In pursuance of this a telegram as per terms of Exhibit P-17 was issued on 21st March 1967 by the Revenue Secretary informing the Deputy Commissioner, South Kanara of the withdrawal of the telegrams Exhibits P-16 and P-18 and instructing him to take up the collection work and make recoveries as usual. The telegrams cannot be isolated from the proceedings which give rise to them. From the documents that I have referred to above, it is clear that the respondent had nothing to do with the issue of the telegrams referred to above.

(b) The next aspect brought to my notice is that the respondent in his speeches during the election campaign referred to the question of land revenue and claimed that it is at his instance that the collection of land revenue in South Kanara was suspended and that he also assured the

audience that had assembled to hear him that the levy of land revenue would be permanently abolished. In this connection a reference is made to the evidence of P. W. 2 who says that in his speech the respondent gave assurances that land revenue need not be paid and that instructions in this regard have been issued by the concerned officials at his instance and that if there should be any demand of land revenue complaint might be made to him. It is contended by Sri B. K. Ramachandra Rao, the learned counsel for the respondent, that in the first place it is improbable that this witness could have been present at the meetings addressed by the respondent in the premises of the Town Bank at Puttur. I have already commented about this witness. It should also be noticed that there is no record of the speech alleged to have been made by the respondent. Even taking the witness's version with regard to the respondent's speech, what it amounts to is merely a statement of fact relating to the steps taken by the Government and the instructions issued by the Revenue Secretary to the Deputy Commissioner and in turn by the Deputy Commissioner to his subordinate Officers. This cannot be said to be an attempt on the part of the respondent to influence the voters to vote for him. It is only a reference to the policy of and the steps taken by the Government. P.W. 3 also refers to a speech made by the respondent and by which he told the audience that he was trying with the Government for the suspension of the collection of land revenue. This is again a statement of his aim and cannot be construed as an interference with the free exercise of the electoral rights of the voters. From the evidence of P.W. 4 referred to earlier it is clear that the public were feeling the weight of the levy of land revenue and were agitating against the enhancement. Therefore, it is that the matter received the attention of the Government and the orders Exhibits R-3, R-4 and R-5 came to be passed. P.W. 4 who is alleged to have attended a meeting held at Mani where the respondent spoke says that the respondent stated that by his interceding the Government have passed order suspending the collection of the land revenue from that year. This statement is only a wrong surmise in view of the Secretariat records to which reference

has been made earlier. The evidence of P. W. 7 is also similar. The petitioner states that in the meeting at Eswara Mangala the respondent stated that by his intercession he caused the suspension of land revenue and communication to be sent in this regard by telegram. The claim alleged to have been made by the respondent is not borne out by the records I have referred to earlier. In any event, if the candidate feels that the particular benefit has been secured to the people at his intercession it does not amount to any undue influence interfering with the free exercise of their electoral rights. What the law prohibits is undue influence and not influence of any other kind. The very idea of an election campaign and canvassing implies that an attempt is made to influence the voters to cast their votes in favour of one candidate or another. It is open to the candidates to place before the electors their past achievements and also policies and the programme that they propose to put through if they should get into power. Issue of Election Manifestos is an established and common practice adopted at Elections. Hence what the respondent is alleged to have said in his speeches does not come within the purview of undue influence as detailed in Section 123 of the Act. Merely because the orders in respect of the suspension of collection of land revenue and water rate were issued by the Government during the pendency of election, it does not lead to a conclusion that the respondent had committed corrupt practice or that he obtained or procured the assistance of any other person in the service of the Government as categorised in Section 123(7) of the Act. A reference in this connection to a decision in A I.R 1962 Punjab page 129 (RAM PHAL V. BRAHAM PARKASH) would be useful. The learned Judges in the above case observe :

> "In a Welfare State, like ours, where the popularly elected representatives of the people hold reins of the Government and run the State administration solely for the general benefit of the people, it is only fit and proper that those in power actually and promptly react to the needs and

demands of the people whose chosen representatives they profess to be. This basic and fundamental principle appears to me to underlie proviso (b) to Sec. 123(2). If the Home Minister in 1957 felt that a provision of law imposing tax on certain commodities was in fact too harsh and called for relaxation in pursuance of the legitimate demands of the tax-payers concerned, then I fail to see how the fact that the Minister concerned favourably reacted to the just needs and demands of the people can possibly be construed to amount to a corrupt practice or undue influence. This public action may have influenced some voters in their decision as to or for whom they should vote but it can hardly be described to be undue influence.

The appellant however, contends that if such a conduct likely to influence the voters then it is most unjust and unfair on the part of the party in power to give relief at a psychological moment which is calculated to put the other candidates at a disadvantage. I may state here that the Election Tribunals and this Court are not concerned with the policy of the law. We have to see what the statute says and if the facts on the present record do not fall within the four corners of the statutory definition of undue influence the charge of corrupt practice of undue influence must fail. In this connection one has to keep in view the rule that an election contest is unlike a suit under the ordinary law of the land and no equitable consideration arises in the trial of such a contest."

The next decision to which a reference may be made is the one reported in A.I.R. 1961 Panjab at page 241 (S. Mehar Singh v. Umrao Singh), in which Falshaw J. makes the following observations:

"Eight witnesses have appeared and alleged that Mehar Singh had promised that he would ge

the allotment of lands of Bahawalpuri displaced persons in Faridkot Tehsil cancelled and instead get them land allotted in Tehsil Sirsa and get the valuation of their lands in Bahawalpur State revised by Government in case they voted for him, and on the 7th or 8th of March he actually caused the Revenue Minister, Mr. Harcharan Singh, to visit some villages to support him in his promise.

It is however, clear, as the learned Tribunal has observed that this demand of the Bhavalpuri refugees as a body was of long standing, and their grievances, if any, could only be met by the Central Government, and I agree with the view of the learned Tribunal that even if the candidate did make a promise that he would try to get grievances remedied and got the Revenue Minister to reinforce his promise, this amounts to only a promise of public action and not individual benefit to such persons as the promise was made to (Sic). In my opinion it was correctly found that this did not amount to a corrupt practice".

Therefore, in the circumstances mentioned earlier, the steps taken by the Government for the suspension of the recovery of revised rates of land revenue and water rate or for the revocation of such suspension were within the scope of the Governmental business and cannot be said to be actuated by ulterior motives. There is also no material to connect the respondent with the action taken by the Government. It must also be noted that the action of the Government was not confined only to South Kunara but to other areas also. Hence, my finding is that the telegram dated 25th January 1967 was not issued at the instance of the respondent nor was the suspension of the land revenue at his instance. No attempt was made by the respondent to cause the State Government to issue any telegram with the intention of influencing or interfering with the free exercise of the electoral rights of the voters. Therefore, my findings

on Issues Nos. (1)(b)(i)(ii) and (iii) are against the petitioner.

11. The next issue relates to Exhibit P-13. Exhibit P-13 is a printed hand-bill purported to have been issued by one Kokebail Sanjiva Shetty. There is no evidence connecting the respondent with this leaflet. Apart from the evidence that leaflets like Exhibit P-13 were distributed by Congress Volunteers and at meetings addressed by the respondent and also others, there is no other evidence to indicate that the respondent was aware of the publication of a leaflet like Exhibit P-13. There is no proof as to who got it printed and at whose instance, or how many copies of the same were printed. Further, it does not contain any appeal to the voters to vote for any particular candidate. It merely states that land revenue need not be paid. This does not amount to undue influence. Evidence in regard to the distribution of leafllets like Exhibit P-13 is the same as with respect to the distribution of leafllets like Exhibit P-1. I have already commented on this evidence with reference to Exhibit P-1 and have come to the conclusion that the evidence cannot be acted upon. The same reason must hold good in regard to Exhibit P-13 also. For the above reasons, my conclusion is that the hand-bills like Exhibit P-13 were not distributed by the respondent and his agents and even if there was such a distribution it has not misled the electors into a belief that if they voted and elected the Congress candidate, they need not pay land revenue and such belief has in any manner interfered with the free exercise of the electoral right of the voters. For these reasons, I hold Issue Nos. 1(c) and (ii) against the petitioner.

12. (a) The next document that is referred to is Exhibit P-12 which is the one that is the subject matter of Issues Nos. 1(d) i (ii) and (iii). With reference to Exhibit P-12 the petitioner has examined P.W. 6 who is said to be the printer of the same. The leaflets appear to have been published by the Congress Chunavana Prachar Samithi, Puttur. P.W. 6 in his evidence states that 2000 copies of

Exhibit P-12 were printed in his press at Puttur. He also states that one Narayan Master furnished the matter for printing. He has not produced the original matter furnished to him by the aforesaid Narayan Master. There is no evidence to indicate what position Narayan Master held in the Chunavana Prachar Samithi. Narayan Master is not examined. There is no reliable evidence to show as to who paid the bill in connection with the printing of the said leaflets. Apart from P.W. 6. there is no other witness who speaks about the printing of Exhibit P-12. The other witnesses only speak about the distribution of leaflets like Exhibit P-12. The evidence relating to this is that of P.Ws. 2. 4 and 7. I have already commented on the probative value to be attached to the evidence of the said witnesses. It is significant to note that the printer has not submitted a declaration to the Deputy Commissioner as required under Section 127 A of the Act. It is not contended by the petitioner that the publication and distribution of Exhibit P-12 comes within the purview of Section 123(3)(A) of the Act. But, it is contended that by the aforesaid acts of printing and distribution of leaflets like Exhibit P-12, there was undue influence on the voters. Therefore, it remains to be examined whether this document could be brought within the purview of Sec. 123 (2) of the Act. Exhibit P-12 incorporates an item of news dated 11-2-1967 published in the issue of the Samyukta Karnataka Newspaper dated 12-2-1967. This item of news is that the Keralas Ahamadiya Muslim Association has appealed to the Muslim Community to support the Congress Party in the coming elections. The matter that is found in bold print in Exhibit P-12 means that the religious freedom that is given in India is not found even in any Muslim State. This is followed by an appeal that for this reason alone Congress should be put in office again. This is the appeal by the Kerala Ahamadiya Muslim Association. The respondent in his evidence states that he has not seen the copies of the leaflets like Exhibit P-12 distributed during his election campaign. It is submitted that even the contents do not amount to any appeal on the ground of religion to bring undue influence on the Muslim

voters. The contents of Exhibit P-12 do not amount to anything more than emphasising the secular character of our Constitution. This is mentioned as one of the reasons why the Congress Party should be put in power. The petitioner's counsel argued that by implication it means that if any other party is brought into power the freedom of religion of the Muslim community will be in danger. I do not think that such a conclusion can be drawn from Exhibit P-12, at best it is only an inference and not the only inference possible. The evidence with regard to the distribution of this pamphlet is the same as with regard to Exhibits P-1 and P-13 and therefore the same comments that I have made in that connection hold good in respect of Exhibit P-12 also.

(b) Another way in which the petitioner attributes an attempt to unduly influence the Muslim voters is with reference to the speeches that the respondent made during his election campaign. P Ws. 2, 4 and 7 speak about the said speeches. They are all speaking from memory. P.W. 2 states that in his speech at a meeting held at Puttur where the Chief Minister also addressed the respondent is alleged to have told the audience that Muslims could enjoy their religious liberty only if they returned the Congress candidates, and their position would not be safe under any other administration. It is pointed out by the respondent's counsel that there is no reference to this particular speech in the petition and further it is contended that this by itself would not amount to any interference with the free exercise of the electoral rights of the voters. P W. 4 in his evidence states that while addressing a meeting held at Mani, the respondent told the Muslim voters that if they wanted protection for their religious liberty, they should vote for the Congress. P.W. 7 states that copies of Exhibit P 12 were being distributed amongst the voters and that the Muslim voters were being told that their position would be safer under the Congress administration. This also does not amount to undue influence on the voters so as to amount to interference with the free exercise of their electoral rights. While referring to the evidence of

the witnesses who speak about what the respondent stated in his speeches, it must be noted that the exact wordings of what the respondent stated in his speeches are not given in the petition nor do the witnesses give the exact wordings. In this connection I may refer to the following observations made by the Assam High Court in 17 E.L.R. page 243 (BIRESH MISRA *v.* RAM NATH SARMA).

> "In cases where the nature of corrupt practice depends upon the words used by the candidate at a meeting, oral testimony in support of the actual words used must be viewed with great care and caution, and, apart from the fact whether certain words were used or not, unless the entire context of the speech is before the Tribunal, isolated words, even if proved, may not give a true import of the speech, and would not be sufficient to prove the commission of the corrupt practice of undue influence".

At best what has been said by PWs. 2 and 4 in their evidence merely amount to an expression of opinion by the respondent and does not amount to a threat or interference with the free exercise of the right of voting within the meaning of Section 123(2) of the Act. Therefore, my findings on Issue Nos. 1 (d) (i), (ii) and (iii) are against the petitioner.

13. The next subject with reference to which a further corrupt practice is alleged by the petitioner relates to the shifting of barrier gates or check-posts put up across the main roads at a distance of six miles from the Kerala-Mysore border on the Mysore side. The petitioner's counsel in this connection invited my attention to Exhibit P-21. Exhibit P-21 is dated 31st January 1967. It is a letter addressed by the respondent to the Chief Minister while he was camping at Mangalore. In this letter the respondent states that the location of the check-gates have been creating good deal of hardship to the people of the area; that these have been explained to the Chief Minister on several occasions and that he had agreed

to move the check-gates from their present location to places one mile away from the Kerala border. The respondent therefore requested that suitable orders be issued to the Deputy Commissioner. Under Exhibit P-21(a) the Chief Minister has made an order as follows:

> "This may be done and tried for a month from tomorrow 1st February 1967 to end of month."

Exhibit P-22 dated 1st February 1967 shows that the South Kanara District Vigilance Committee had resolved at its meeting held on 17th January 1967 that the check-posts referred to in Exhibit P-22 be shifted from their present location to other places. And the Chief Minister had also passed an order to the same effect on 31st January 1967, as mentioned earlier. Referring to Exhibit P-23 it is pointed out by the petitioner's Counsel that the check-posts were shifted back in March 1967 to their original places. The petitioner's counsel argues that the above circumstances indicate that the object of shifting the check-posts at the psychological period, *viz.*, election period indicates the intention of the respondent to secure the votes of the electors in the area called the "Belt Area", *i e*, the area comprising a distance of five miles in the Mysore State from the Kerala border, adjoining the Puttur Constituency. It is submitted that these acts of the respondent and the officers concerned have unduly influenced the electors to futher the prospects of the respondent in the election. From Exhibit P-20 dated 31st January 1967 it can be gathered that the South Kanara District Vigilance Committee had on 17th January 1967 resolved that the check-posts referred to in it should be shifted from their present location to other places mentioned therein, with effect from 1st February 1967, for one month on a trial basis. Exhibit P-20 also refers to the order of the Chief Minister Exhibit P-21 (a). In this connection my attention was also invited to the evidence of P Ws. 3, 4 and 7. P. W. 3 deposes that the respondent in his speech at Vittala assured the audience that he would attempt the shifting of the check-posts five miles further towards the Kerala Border as the present location of the same is causing

trouble to the people. Further, this witness states that from February the check posts were shifted from Ukkada place to Saradaka. On 29th February 1967 the check-posts were shifted to their original place at Ukkada. After remaining there for 3 days it was again shifted to Sardaka where they were for three months *i.e.*, March, April and May 1967. Then again they were shifted to Vittala Village. Thus, it appears that the shifting has been taking place at intervals and this is not attributable to any intention on the part of the Government to interfere with the free exercise of the electoral rights of the voters, but to meet the exigencies of the situation relating to the control of transport of food-grains from the Mysore State to the Kerala State This conclusion is also supported by the evidence of P.W. 4 who corroborates the evidence of P.W 3 and states that the respondent assured the audience that he would cause the shifting of the check-posts. P.W. 7 says that he heard the speech of the respondent at Eshwara Mangila where the respondent is alleged to have stated that he caused the issue of an order to shift the gates. Taking the evidence of these witnesses together, it merely means that the respondent assured the audience that he would secure the benefit to the people of the locality. It cannot be inferred that by this the discretion of the voters was in any manner interfered with. As long as the securing of the benefit is not made a condition, on the voters exercising their electoral rights in a particular manner, there can be no interference with the free exercise of the electoral rights of the voters. A mere assurance of a candidate that he would secure the relief to the voters or a statement by him that a particular relief was got to the voters on account of his intercession does not by itself amount to undue influence under Section 12 (2) of the Act. Further, the circumstances mentioned above also do not support the contention that the respondent obtained or procured any assistance from the Deputy Commissioner for the furtherance of his prospects in the election by the issue of orders by the Deputy Commissioner shifting the check-posts. Procuring or obtaining assistance connotes the concerted action by a candidate and by any of the officers

mentioned in Section 123(7). There is no material in this case to indicate that the respondent approached any officers with a view to procure or obtain their assistance. Therefore, my findings on issues Nos. 1(f), (i), (ii) and (iii) are against the petitioner.

14. The next item of attack is that the respondent failed to maintain a separate and correct account of the expenditure incurred for the election and that he has contravened the provisions of Section 77 of the Act and Rule 86 of the Conduct of election Rules. No material is placed by the petitioner in support of this contention. Even if the allegation that the respondent has not maintained a separate and correct account of the election expenses, and the said account is not in accordance with the provisions of Rule 86, it would not be a corrupt practice within the meaning of Section 123(6) of the Act. In 1959 Mys. L.J. 952 at page 960 (VENKATARAMAIAH *v.* NARAYANA GOWDA), the true scope of Section 123(6) read with Section 77 of the Act was considered. It was observed that:

> ".....What it [Sec. 123(6)] Prohibits is the incurring or authorising of expenditure in contravention of S 77 and not the method and manner of maintaining accounts. S.77(1) says that an account of the expenditure incurred or authorised in connection with the election should be maintained; S. 77 (2) provides for Rules to be framed prescribing the particulars of the account to be maintained. It is only S. 77 (3) which deals with incurring or authorising of Expenditure. A plain reading of S. 77 in conjunction with sub-section (6) of S. 123, makes it clear that what is hit by the latter provision is the contravention of S. 77 (3) and not the contravention of sub-sections (1) and (2) of S. 77."

Therefore, the lapse on the part of the respondent to maintain a separate and correct account would not constitute a corrupt practice under Section 123 (6). It is pointed

out by the petitioner that in the statement of accounts Exhibit P-27 the respondent has mentioned an amount of Rs. 250 being election deposit as an item of expenditure. As circumstances stood on 17th March 1967 this statement is correct as the respondent got back the deposit only subsequently. Even otherwise, this would not amount to a violation of the provisions of Section 123 (6). The inclusion of the sum of Rs. 250 goes only to increase the election expenses and it could not be a corrupt practice which implies the existence of a corrupt motive behind it, which is absent in this case. There is absolutely no evidence to support the allegation that the respondent has incurred expenditure much above the statutory limit of Rs. 6000. Hence, my finding on the last issue is also againts the petitioner.

15. In view of the findings given above, the petition fails and is dismissed. But, in view of my observations regarding the publication of Exhibit P-1 and the gross negligence on the part of R. W. 4 and the respondent in allowing the name of the Deputy Commissioner to be included therein, and giving room for doubt that the inclusion of the Deputy Commissioner's name was deliberately done, I direct the parties to bear their own costs. To draw up the memo of costs the Advocates fee for each party is fixed at Rs. 750.

(Sd.)

K. R. GOPIVALLABHA IYANGAR,
JUDGE.

By order,

K. S. RAJAGOPALAN,
Secretary to the Election Commission
India.